

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SHAWN K. WILLIAMS,

Petitioner,

-vs-

MR. MARK BRADT, Superintendent of
Attica Corr. Fac.,

Respondent.

No. 1:12-CV-01217 (MAT)
DECISION AND ORDER

I. Introduction

Shawn K. Williams ("petitioner"), proceeding *pro se*, petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner is incarcerated pursuant to a judgment entered November 28, 2001, in Monroe County Court (Geraci, J.), following a bench verdict convicting him of murder in the second degree (N.Y. Penal Law § 125.25). Plaintiff was sentenced to an indeterminate prison term of 21 years to life. The New York State Supreme Court, Appellate Division, Fourth Department, unanimously affirmed petitioner's judgment of conviction on March 19, 2004. See People v. Williams, 5 A.D.3d 1043 (4th Dep't 2004), lv. denied, 2 N.Y.3d 809, rearg. denied, 19 A.D.3d 1185 (4th Dep't 2005). A subsequent application for a writ of error coram nobis was denied on October 2, 2009, see People v. Williams, 66 A.D.3d 1498 (4th Dep't 2009), lv. denied, 13 N.Y.3d 911, and a CPL § 440.10 motion to set aside the judgment was denied on July 31, 2012, with leave to appeal denied on October 14, 2002. See doc. 1-2 at 22, 38.

Pursuant to 28 U.S.C. § 636(b)(1), the Court¹ referred this petition for a writ of habeas corpus (doc. 1) to United States Magistrate Leslie G. Foschio for a Report and Recommendation ("R&R"). Judge Foschio's R&R, filed on May 16, 2017, recommends that the Court dismiss Williams' petition as untimely. (Doc. 8). Petitioner was mailed a copy of the R&R, but has submitted no objections.

When no objections are filed, the Court reviews an R&R on a dispositive motion for clear error. See Eisenberg v. New England Motor Freight, Inc., 564 F. Supp. 2d 224, 226 (S.D.N.Y. 2008). The Court has reviewed the R&R and finds no error, clear or otherwise. The Court therefore adopts the R&R in its entirety, and for the reasons stated therein, the petition (doc. 1) is therefore dismissed with prejudice as untimely. The Court notes that Judge Foschio's R&R warned plaintiff that failure to file objections within the allotted time period would operate as a waiver of his right to appeal this Court's order, and the Court therefore construes plaintiff's failure to object as a waiver. See doc. 8 at 8 (citing Thomas v. Arn, 474 U.S. 140 (1985); Small v. Sec. of Health and Hum. Servs., 892 F.2d 15 (2d Cir. 1989)). In any event, because petitioner has failed to make a "substantial showing of a

¹ This case was formerly assigned to Judge Lawrence J. Vilardo, who referred it to Magistrate Judge Leslie G. Foschio for a Report and Recommendation, which was completed and filed on May 16, 2017. The case thereafter was referred to this Court by order dated May 18, 2017.

denial of a constitutional right," 28 U.S.C. § 2253(c)(2), the Court declines to issue a certificate of appealability.

SO ORDERED.

S/Michael A. Telesca

HON. MICHAEL A. TELESCA
United States District Judge

Dated: June 28, 2017
Rochester, New York.